

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2000-98

May 8, 2000

CENTRAL MAINE POWER COMPANY  
AND CMP NATURAL GAS, L.L.C.,  
Application for Approval of Affiliated  
Interest Transaction to Convey an  
Easement for Gorham Metering &  
Regulation Station (§§ 707 & 1101)

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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**I. SUMMARY**

We approve the sale of property in Gorham by Central Maine Power Company (CMP) to its affiliate, CMP Natural Gas, LLC (CMPNG),<sup>1</sup> for construction of a metering and regulating station.

**II. PROCEDURAL HISTORY**

On February 2, 2000, CMP and CMPNG filed an application for approval of the sale of property between affiliates, pursuant to 35-A M.R.S.A. § 707. CMP sought authorization to convey an easement in property located beside its electric corridor and adjacent to an interstate natural gas pipeline to CMPNG for purposes of building a metering and regulating station and appurtenant facilities.

The applicants requested that our regulatory review be expedited and completed by April 1, 2000 so that construction of the facility could begin as planned. The filing contained the prefiled direct testimony of Tim Kelley, President of CMPNG and Kenneth Freye, Property Manager for CMP, and a Closing Agreement and Easement Indenture.

The Commission issued a Notice of Proceeding on February 11, 2000 to the service list for a predecessor case, *Central Maine Power Company and CMP Natural Gas, L.L.C., Application for Approval of Affiliated Interest Transaction, Sale of Property*, Docket No. 99-739.

The Office of the Public Advocate intervened in this proceeding. Bangor Gas Company, LLC, was allowed limited intervention for participation only on issues of general public policy.

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<sup>1</sup> CMP Natural Gas, LLC, has now been renamed Maine Natural Gas, LLC.

Also on February 11, 2000, the Hearing Examiner issued a procedural order requiring the applicants to comply with the filing requirements of Chapter 820, section 7(C)(3)(b) of the Commission's rules, including the filing of pre-filed testimony and market studies or appraisals supporting the proposed sale price. On February 22, 2000, CMP filed copies of a portion of a 1998 appraisal of similar property done by Portland Natural Gas Transmission System (PNGTS) in support of the sale price of \$3,100 for an easement covering .53 acres of CMP property, including transaction costs.

The Examiner held an initial case conference on February 24, 2000 at which parties indicated that a more recent appraisal of the property at issue would be necessary. Consequently, on March 1, 2000, CMP filed an appraisal for the property done by Leland Buzzell of Buzzell Associates and revised the contractual sale price to \$6,000 to conform with the new appraisal. On March 8, 2000, CMP and CMPNG filed the Supplemental Prefiled Direct Testimony of Mr. Kenneth Freye.

The OPA retained Eastern Appraisal and Consulting, Inc. to review Mr. Buzzell's appraisal and to render an opinion on whether the appraisal appears consistent with industry practices and produced a reasonable sales price. The OPA opinion was filed with the Commission on March 24, 2000.

The parties conducted discovery over a period of approximately four weeks and technical conferences were held on March 1st and 22nd at which CMP presented its witnesses, Messrs. Freye and Buzzell, and OPA presented its witness, H. Randolph Glennon of Eastern Appraisal & Consulting, Inc.

CMP, CMPNG, and OPA filed a Stipulation Agreement on March 24, 2000 and waived their right to a written Examiner's Report.

The Commission deliberated this matter on April 3, 2000 and approved the transaction.<sup>2</sup>

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<sup>2</sup> After the Commission's deliberations, on April 26, 2000, Maine Natural Gas, LLC (Maine Gas, formerly CMPNG) filed a revised Easement Indenture and Site plan reflecting "minor technical changes" due to "a specification imposed by Maritimes & Northeast Pipeline, LLC late in the review process that requires the replacement of a manually-operated valve with an automated valve." According to the filing, this change necessitated a reconfiguration of the M & R station footprint and a reduction in the permanent easement granted to Maine Gas from CMP from 0.530 acres to 0.477 acres. The cover letter indicates that copies of the revision were served to all parties in this proceeding. Because the changes do not appear substantive enough to modify the Commission's conclusion with respect to this transaction, and because no party has objected to Maine Gas's filing, the Commission hereby accepts the revised filing to supersede the original.

### III. LEGAL STANDARDS

When reviewing stipulations, we must independently determine whether a transaction is consistent with the public interest, reasonable, and not contrary to legislative mandate. We must also conclude that the parties joining the stipulation represent a sufficiently broad spectrum of interests to assure the Commission that there is no appearance of disenfranchisement. See *Central Maine Power Company, Proposed Increase in Rates, Docket No. 92-345(II)*, Detailed Opinion and Subsidiary Findings (Me. P.U.C. Jan. 10, 1995) and *Northern Utilities, Inc., Proposed Environmental Response Cost Recovery, Docket No. 96-678*, Order Approving Stipulation (Me. P.U.C. April 28, 1997.)

Accordingly, we will consider the record evidence to determine whether it supports the resolution proposed by the stipulating parties.

### IV. DESCRIPTION OF SALE

The sale involves an easement of approximately 1/2 acre out of a total lot of about 3 acres and is situated proximate to both the Joint Facilities interstate natural gas pipeline and CMP's electric corridor. CMPNG will build a metering and regulating station on this land, channeling natural gas from the interstate pipeline to serve the Calpine facility. The property is zoned as rural.

The original sales price was based on an older appraisal that did not specifically pertain to the parcel at issue here. CMP and OPA subsequently retained appraisers to provide a site-specific valuation.

Both appraisers looked at the one-acre portion of the land that was not encumbered by transmission lines or the pipeline. They estimated the value of the easement as the value of the full one-acre parcel, less the residual value of the portion not subject to the easement.

These appraisals used a standard valuation method that bases the value of the appraised property on that adjacent to it, the so-called "over the fence" method. The appraisers also considered residential use as the standard for determining the saleability of the property and for developing comparable area sales.<sup>3</sup>

Mr. Buzzell estimated the value of the land at \$8,000 per acre and the remaining value of the parcel after conveying the easement at \$2,000, implying an easement value of \$6,000. The OPA's appraiser, Mr. Glennon, generally confirmed the Buzzell appraisal, although he noted, "in my opinion, it would be possible for another appraiser to arrive at a slightly higher value, perhaps

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<sup>3</sup> The appraisers noted that an industrial use market would produce land values considerably higher than residential land use sales.

\$10,000 to \$11,000 per acre,” rather than \$8,000 per acre as evaluated by Mr. Buzzell. He did not conclude that Mr. Buzzell’s value was unreasonable.

## V. DECISION

On the basis of the appraisers’ opinions in this record, we conclude that the \$6,000 figure is reasonable for this easement sale. Looking at the totality of the transaction, we also find that it is consistent with the public interest and not contrary to legislative mandate. Finally, we find that the stipulation represents a satisfactory range of interests suggesting that it is an adequate resolution of this matter.

While we approve the transaction, we note that the appraisers relied upon an “over the fence” approach to developing their appraisals. Under this technique, the land is valued entirely without regard to its use as utility property; appraisers do not consider that this property has value to certain buyers, such as CMPNG, precisely because it is adjacent to the PNGTS pipeline, the spur that CMPNG is constructing to Calpine, and the electric corridor. In fact, the appraisers applied industry norms that dictate that proximity to utility facilities reduces the value and saleability of property for both residential and commercial uses, largely due to aesthetic considerations.

In any event, there is no direct evidence on what additional value there may be to this purchase due to location factors, and considerations of time and money militate against prolonging this case to consider that issue.<sup>4</sup> Nor will we attempt to compare the sale price of this property to other CMP property sales to unaffiliated natural gas pipeline companies where time pressures and “convenience value” also played a significant role in price negotiations. We will, however, reserve for future proceedings the questions of how utility property should be valued in this specialized market and to ensure that affiliates and non-affiliates are treated equally by utilities.

Accordingly, we

## ORDER

1. That Central Maine Power Company’s sale of an easement to its affiliate, Maine Natural Gas, LLC, is approved.

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<sup>4</sup> Because the dollars at issue in this case are relatively small -- similar to amounts that could be expended to continue the litigation -- we think it appropriate to approve the stipulation at the negotiated price and resolve this matter in a timely way.

Dated at Augusta, Maine, this 8th day of May, 2000.

BY ORDER OF THE COMMISSION

Raymond J. Robichaud  
Acting Administrative Director

COMMISSIONERS VOTING FOR: Welch  
Nugent  
Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.